

LEASEHOLDER PROTECTIONS

BUILDING
SAFETY
ACT

What are the leaseholder protections in the Building Safety Act?

The leaseholder protections in the Building Safety Act came into force recently which means qualifying leaseholders in England can no longer be charged for cladding remediation, and there are legal protections in place for non-cladding costs.

Qualifying leaseholders can only be asked to share capped non-cladding costs in certain circumstances and there will be clear transparency and financial reporting requirements for building owners.

Further detail on this will be set out in regulations decided by Parliament.

In the meantime, the government has provided the following information that you may find useful.

Who do these protections apply to?

The protections will apply to leaseholders whose property is in a building above 11m (or 5 storeys) and where, on 14 February 2022: the property was the leaseholder's main home, or the leaseholder owned no more than 3 UK residential properties.

The protections will automatically transfer to any future buyers of the property. This means that all new owners of a property that was eligible for the protections on 14 February 2022 will be covered, even if you have bought it since then.

If the criteria is met, who is liable to pay for the building safety repairs?

- The Building Safety Act means that building owners and landlords are now liable to pay to fix historical fire safety defects if:

- they are not (or are linked to) the developer of a building with fire safety defects, or

- they meet a certain wealth threshold

- If the building owners and landlords do not meet these tests, they will only be able to pass on non-cladding costs up to a cap. The cap is normally £10,000 (£15,000 in Greater London) – the cap may be higher or zero, depending on how much you paid for your property.

- It is now illegal for building owners and landlords to pass on costs above the cap to qualifying leaseholders. The cap applied retrospectively, which means it includes money you have spent so far on relevant costs.

- The Act makes it illegal to pass on any costs to remove unsafe cladding to qualifying leaseholders.

- The cap covers costs for unsafe non-cladding defects, as well as interim fire-safety measures on your home.

- These measures mean you will no longer be the first port of call to pay for repairs. How these repairs are paid for will depend on the type of fire safety defect and how your building is owned. Building owners and higher landlords are legally responsible and must ensure the building is safe.

What costs do these protections apply to?

- The leaseholder protections cover work to fix a building safety risk, as defined in the Building Safety Act.
- In simple terms, this includes any defect caused during the construction or refurbishment of a building in the past 30 years that causes a risk to people's safety from the spread of fire or the collapse of some or all of the building.

Will you need to pay building safety bills from service charge invoices dated before 28th June?

- No. The Building Safety Act protects qualifying leaseholders from costs and is fully retrospective. This means it applies to bills irrespective of when they were issued.
- Should building owners be legally entitled to recover some historical building safety costs from qualifying leaseholders, they will have to issue new invoices for any such charges and prove that they are legally entitled to do so now that the law has fundamentally changed.
- Outstanding invoices for historical cladding or non-cladding building safety costs caused during construction or refurbishment are void and should be disregarded, even where they were issued before the Act came into force. Any landlord or agent who seeks to enforce them could be committing a criminal offence.
- Before a landlord can charge any historical non-cladding costs, they must fulfil a series of transparency and financial reporting requirements that will be set out in regulations during July. If they do not, the law requires them to pay all building safety costs in full, with no charges at all for leaseholders.
- The Act defines the height of the building as from the ground level to the surface of the floor of the top storey (excluding any floor that is simply machinery or plant rooms).
- For counting the number of storeys in a building, you do not include any below ground, but do include any mezzanine, if its floor area is at least half that of the other floors. The building owner or managing agent will be able to confirm the height and number of storeys.

Non-Cladding Fire Safety Defects

How Are You Protected?

The protections in the Act protect qualifying leaseholders from non-cladding costs, such as the replacement of inadequate fire doors or fixing missing compartmentation.

Your developer or building owner will be required by law to pay in full to fix historical building safety issues on your building – including non-cladding safety defects and interim fire safety measures – if they meet the following criteria:

- The developer still owns the building which they built or refurbished
- The landlord or building owner are linked to the original developer

Even if the developer no longer owns your building, the Government still expects them to do the right thing and rectify any defective properties they have developed.

Many of the UK's house builders have pledged to fix historical life-critical fire safety issues on all buildings over 11m which they have developed or refurbished over the last 30 years.

Buildings Under 11m- Do these protections apply?

The leaseholder protections do not apply below 11m.

If your building is below 11m then lower cost mitigations such as fire alarms are likely to be far more appropriate and proportionate.

We will continue to investigate individual cases of buildings under 11m where costly remediation is being commissioned to understand why the building owner is doing this work.



Cladding Repairs How Will They Be Paid For?

You will no longer pay to fix unsafe cladding on your building.

Where a developer or a linked company still owns a building with unsafe cladding, it cannot pass on any costs and must pay for the removal itself.

More than 45 of the UK's biggest house builders have pledged to take responsibility for all necessary work to address life-critical fire safety defects on buildings over 11m that they had a role in developing or refurbishing over the last 30 years, even where they no longer own them.

This means they will cover the costs to repair all life-critical fire safety defects on your building arising from the original design, construction or refurbishment, including replacing unsafe cladding and addressing non-cladding defects.

Where a developer cannot be identified or has not yet agreed to pay for its own buildings, funding will be made available directly to pay for cladding repairs. This will ensure no leaseholder in buildings above 11m faces costs to fix unsafe cladding on their building.

For buildings 11-18m in height a new scheme, funded by developers through the Building Safety Levy, will pay for eligible work to fix unsafe cladding.

For buildings over 18m with unsafe cladding building owners can apply to the government's Building Safety Fund.

Where building owners refuse to fulfil their responsibilities, enforcement bodies as well as leaseholders, will also be able to take them and their parent companies to court so they can be made to fix buildings and pay for repairs.

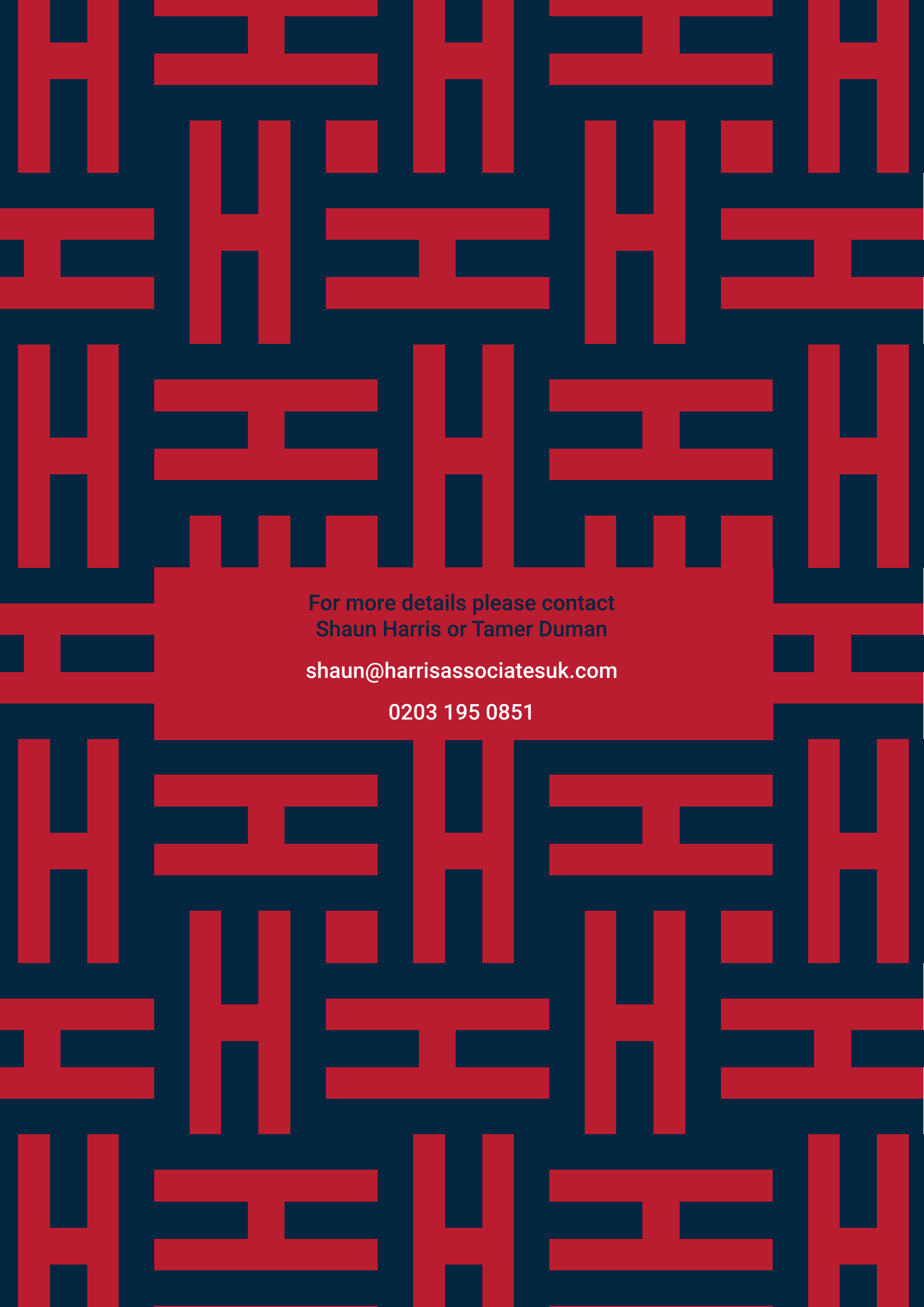


How Can leading Building and Project Consultants Harris Associates, Help?

If you are finding these ever changing regulations hard to keep up with, Harris Associates can advise on all the essential information around the Fire Safety Act 2021 and Building Safety Act 2022. We offer fire risk assessors, fire engineers, building owners and property managers a range of services that help speed up the process of assessment whilst ensuring that the information upon which assessments will be made is accurate and reliable. We have a dedicated façade and compliance team, headed by a chartered engineer, comprising of qualified façade engineers and chartered building surveyors that are experienced in forensic investigation and on-site intrusive surveys.

Our inherent knowledge of building construction, linked with our façade expertise and in-depth knowledge and understanding of the statute and related standards gives us the ability to provide all round and flexible consultancy advice. As a RICS regulated firm we are committed to act with impartiality and transparency, and therefore proportionately as experts.





For more details please contact
Shaun Harris or Tamer Duman

shaun@harrisassociatesuk.com

0203 195 0851